

BRB No. 07-0294

W.A.)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
MARINE REPAIR SERVICE,)	DATE ISSUED:
INCORPORATED)	11/23/2007 <u>2007</u>
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION, LIMITED)	
)	
Employer/Carrier-)	
Respondents)	
)	
		DECISION and ORDER

Appeal of the Order Awarding Attorney Fee and Paralegal Fee of Alan L. Bergstrom, Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna Klein Camden LLP), Norfolk, Virginia, for claimant.

G. Mason White (Brennan, Harris & Rominger LLP), Savannah, Georgia, for employer/carrier.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Order Awarding Attorney Fee (2006-LHC-01002) of Administrative Law Judge Alan L. Bergstrom rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *See Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant, a refrigerator mechanic, filed a hearing loss claim based on a March 3, 2005, audiometric evaluation. Employer controverted the claim. On March 24, 2006, the claim was referred to the Office of Administrative Law Judges. A formal hearing was scheduled for Savannah, Georgia on October 25, 2006, but immediately prior to the hearing, the parties settled the claim. Employer agreed to pay claimant for the hearing loss reflected in the March 3, 2005 audiogram. Accordingly, the administrative law judge, in an Order dated October 23, 2006, remanded the case to the district director for appropriate action.

Subsequently, claimant's counsel filed an application for an attorney's fee for work performed before the administrative law judge. Counsel requested a fee of \$5,502.50 for 21.25 hours of attorney services at an hourly rate of \$250 and two hours at an hourly rate of \$95 for paralegal services. Counsel also requested costs of \$315.54, including \$181.29 in travel expenses. Employer objected to the fee request, arguing that \$250 was an excessive hourly rate for the Savannah area and that \$225 was an appropriate rate. Employer also objected to various billing entries as excessive and/or vague. Claimant replied to employer's objections.

In his Order Awarding Attorney Fee, the administrative law judge addressed employer's specific objections and reduced the requested hourly rate for attorney services from \$250 to \$225. The administrative law judge disallowed 3.11 hours of attorney services and 1.36 hours of paralegal services. The administrative law judge also disallowed the requested cost of \$181.29 for "travel expenses," finding that the entry lacks specificity. Therefore, the administrative law judge awarded claimant's counsel a fee of \$4,152.30, plus \$134.24 in costs.

On appeal, claimant contends that the administrative law judge erred in reducing his requested hourly rate from \$250 to \$225 and in disallowing his request for travel expenses. Employer responds, urging affirmance of the administrative law judge's fee award. Claimant's counsel subsequently submitted supplemental authority wherein an administrative law judge had awarded him an hourly rate of \$250 for work in Savannah.

Claimant's counsel practices primarily in the Norfolk, Virginia area. He contends that the administrative law judge erred in reducing his requested hourly rate of \$250 to \$225 on the ground that \$250 is excessive for the Savannah area. In this regard, claimant's counsel argues that he is entitled to his regular hourly rate of \$250 regardless of the location, as the rate is commensurate with his experience. He also contends that \$250 is an appropriate rate in Savannah.

We reject claimant's contention. The administrative law judge fully addressed counsel's assertion that he should be compensated at the hourly rate of \$250, but found more persuasive employer's evidence of fee awards at the rate of \$225 for the Savannah area. Order at 5. Evidence of awards in other cases in the geographic area may be relied upon by an administrative law judge in setting an appropriate hourly rate. *See generally B.C. v. Stevedoring Services of America*, ___ BRBS ___, BRB No. 07-0162 (Oct. 16, 2007); *see also Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 38 BRBS 37(CRT) (4th Cir. 2004). As claimant has not established an abuse of discretion in the administrative law judge's setting of the hourly rate, we affirm the awarded rate of \$225. *Baumler v. Marinette Marine Corp.*, 40 BRBS 5 (2006).

Claimant's counsel also states that the administrative law judge erred in disallowing the \$181.29 billed for "travel expenses." The administrative law judge disallowed this expense, *inter alia*, because claimant did not identify what it encompassed and the administrative law judge therefore could not assess its reasonableness. Order at 6. While counsel offers on appeal an explanation for this expense, the administrative law judge did not abuse his discretion in finding that counsel failed to provide sufficient information from which he could determine its reasonableness. 33 U.S.C. §928(d); *see generally Parks v. Newport News Shipbuilding & Dry Dock Co.*, 32 BRBS 90 (1998), *aff'd mem.*, 202 F.3d 259 (4th Cir. 1999) (table). Therefore, we affirm the denial of the claimed travel expenses.¹

¹ Thus, we need not address counsel's contention that the administrative law judge also erred in denying this expense on the ground that local counsel would not have been entitled to reimbursement of travel costs. *See Baumler v. Marinette Marine Corp.*, 40 BRBS 5 (2006).

Accordingly, we affirm the administrative law judge's Order Awarding Attorney and Paralegal Fees.²

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

² In view of the lack of success on appeal, we deny counsel's request for an attorney's fee for work performed before the Board. 33 U.S.C. §928.